IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 549 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KIRAN PLASTIC INDUSTRIES

Versus

VITHALBHAI JIVABHAI PRAJAPATI

Appearance:

1. First Appeal No. 549 of 1999

MR NILESH M SHAH for Appellant No. 1

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 01/10/2001

ORAL JUDGEMENT

The present appellant - original opponent has filed this First Appeal against the judgement and decree dated 14.5.1998 passed in Workmen Compensation Application No. 8/91 by the Workmen Compensation

Commissioner, Kalol under the Workmen's Compensation Act, 1923, wherein, he has awarded Rs.35,490/- by way of compensation and Rs.17,745/- being penalty @ of 50% of the awarded amount with an interest at the rate of 6% p.a. and also Rs.500/- towards costs.

2. This First Appeal has been filed in the year 1999 alongwith delay application and it remained in file for a period of two years and thereafter, delay was condoned by this Court (Coram : D.P. Buch, J.) in Civil Application No.1594/99 on 5.3.2001.

3. On 5.9.2001 learned counsel for the appellant has submitted an application requesting this Court to permit him to retire from the proceedings and therefore, specific order was passed by this Court on 5.9.2001 and concerned advocate was permitted to retire from the proceedings and notice was issued to the present appellant through Court. In pursuance of that the appellant appeared alongwith learned advocate Mr. N.M. Shah and he has made a statement that he has filed Vakalatnama afresh.

4. Today, I have heard learned counsel for the appellant Mr. N.M. Shah on the merits of the matter for admission. He has drawn my attention to the reasoned judgement and order passed by the Workmen Compensation Commissioner, Kalol in Workmen Compensation Application No. 8/91 on 14.5.1998 alongwith relevant record and proceedings, which he was having with him.

4. But the facts remain that he does not deny the relationship between the present appellant and original applicant as employer and employee. He also does not deny the accident and injuries caused to the present opponent and therefore, what is challenged before this Court is the amount of award awarded by the authority to the present opponent- original applicant by way of compensation. He has produced xerox copy of the affidavit to that effect and has drawn my attention to the alleged voucher dated 13.6.1990. Xerox copy of the affidavit is ordered to be taken on record. On going through the voucher in question, which is a part of the record, it does not show the amount in question, which has been given by the present appellant to the present opponent original applicant. Secondly, the alleged affidavit, which is a xerox copy, does not disclose the amount of Rs.25,000/- paid by the appellant and therefore, even if matter would be remanded back, then also, there would be no evidence on record so as to change its finding given by the Commissioner and no

purpose will be served by remanding the matter. I am also aware that the incident has taken place in the year 1990 and compensation has been awarded in the year 1998 and that amount of compensation has not been paid to the opponent original applicant, though, recovery certificate has been issued and it appears that even the Collector has not co-operated and ultimately, the appellant has filed Special Civil Application in this Court and it seems that the appellant has paid the same amount in two installments. In this view of the matter, I do not think it necessary to interfere with the Judgement and order passed by the Workman Compensation Commissioner in W.C.A. No. 8/91. Hence, this First Appeal is required to be rejected.

5. This First Appeal is rejected. Notice is discharged.

(R.P. Dholakia, J.)

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